

REMARKS

In the Final Office Action that was mailed on July 15, 2003, claims 6 and 12 were objected to due to informalities; claims 1, 7, and 13 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness; claims 1-5, 7-11, and 13-17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Mattson, Jr. et al. (U.S. Patent No. 6,430,741) ("Mattson"); and claims 6, 12, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Mattson. The foregoing objections and rejections are respectfully traversed.

Claims 1-18 are pending in the subject application, of which claims 1, 7, and 13 are independent claims.

Entry of Amendment After Final Rejection:

The Applicant respectfully asserts that the amendments presented herein require only a cursory review by the Examiner, and respectfully requests that the Examiner enter such amendments.

Amendments to the Claims:

Claims 1, 7, and 13 are amended herein to recite "examining an access state and a number of accesses of a data item" and "analyzing degree of association relationships between processes and data items based on said access state and the number of accesses of the data item." Support for the amendments to claims 1, 7, and 13 may be found in the Specification on page 6, first paragraph, in the paragraph that begins on page 9 and ends on page 10, and in Figure 3.

In addition, claims 6, 12, and 18 are amended herein to recite "an" other division. Claim 18 is amended herein to depend from claim 16 instead of claim 11. Claims 1, 7, and 13 are amended herein to delete the term "strength."

Care has been exercised to avoid the introduction of new matter.

Objections to the Claims:

Claims 6 and 12 are amended herein, taking the examiner's comments into consideration, and directed to overcoming the objections thereto. The Applicants respectfully request that the examiner withdraw the objections thereto.

Rejections of the Claims:

Rejections under 35 U.S.C. § 112, second paragraph:

Claims 1, 7, and 13 are amended herein, taking the examiner's comments into consideration, and directed to traversing the rejections thereto. The Applicants respectfully request that the examiner withdraw the rejections thereto.

Rejections under 35 U.S.C. § 102(e):

In the detailed rejection of independent claim 1, on page 4 of the Office Action, the examiner cited column 5, lines 9-25 of Mattson as teaching a means for examining a data item access state in a program. That section of Mattson discusses using a counter to track the number of accesses to data elements (Mattson, col. 5, lines 9-11 and 17-21).

Independent claims 1, 7, and 13 of the subject application have been amended herein to recite "examining an access state and a number of accesses of a data item" and "analyzing degree of association relationships between processes and data items based on said access state and the number of accesses of the data item." As amended, independent claims 1, 7, and 13 recite both the number of accesses and the access state. Independent claims 1, 7, and 13 (as amended herein) are patentably distinguishable over Mattson, because the section cited by the examiner as anticipating the access state relates instead only to the number of accesses, which is now clearly and separately recited in each independent claim. In addition, dependent claims 2-5, 8-11, and 14-17 of the subject application (as amended herein) are allowable based in part on their dependency, directly or indirectly, from one of independent claims 1, 7, and 13.

Rejections under 35 U.S.C. § 103(a):

In addition to being allowable based in part on their dependency, directly or indirectly from one of independent claims 1, 7, and 13 (as amended herein), dependent claims 6, 12, and 18 are also allowable because there is no motivation to modify Mattson. Despite the examiner's assertion that someone "of ordinary skill would have been motivated to analyze only a portion of a system using the means disclosed by Mattson, Jr. in order to maximize processing efficiency," (Office Action, p. 7) there is no factual basis for such a conclusion.

MPEP § 706.02(j) sets forth the contents of a rejection under § 103: "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure" (emphasis in original).

Factual findings in support of a *prima facie* case of obviousness must be supported by substantial evidence. In re Zurko, 59 USPQ2d 1693, 1696 (Fed. Cir. 2001). The examiner has provided no such substantial evidence in support of his conclusion that it would have been obvious to modify Mattson to get the features of claims 6, 12, and 18. The section of Mattson that was cited by the examiner (column 4, lines 45-56) refers to a consideration of efficiency, but in a context that is completely unrelated to the features of claims 6, 12, and 18. If it were indeed obvious to modify Mattson in order to "maximize processing efficiency" as the examiner suggests, there would likely be objective evidence of someone making such a modification. However, because the examiner has not provided any such evidence that someone did modify Mattson with the examiner's perceived benefit in mind, then the modification must not have been obvious.

Conclusion:

Therefore, the Applicants respectfully request that the examiner withdraw the

outstanding rejections under Mattson.

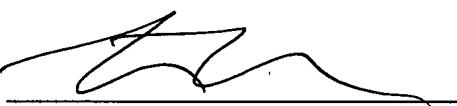
Withdrawal of the foregoing objections and rejections is respectfully requested.

There being no further objections or rejections, it is submitted that the application is in condition for allowance, which action is courteously requested. Finally, if there are any formal matters remaining after this response, the examiner is requested to telephone the undersigned to attend to these matters. If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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